



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/151483

PRELIMINARY RECITALS

Pursuant to a petition filed August 21, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Washington County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on October 08, 2013, at West Bend, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits from Petitioner in the amount of \$184 for the month of September, 2012.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Kenneth Benedum

Washington County Department of Social Services
333 E. Washington Street
Suite 3100
West Bend, WI 53095

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Washington County.
2. On June 17, 2013, the Petitioner completed her FS renewal. Her certification period was August 1, 2013 – July 31, 2013.

3. On July 30, 2013, the Petitioner submitted verification of medical expenses that were paid during the certification period.
4. On August 12, 2013, the agency issued a Notice of Decision informing the Petitioner that her monthly FS benefit would increase to \$200 effective September 1, 2013. The increase was due to budgeting the Petitioner's medical expenses in determining her monthly allotment.
5. On or about August 26, 2013, the agency determined the medical expenses should not have been budgeted in determining the Petitioner's monthly allotment. The agency issued a Notice of Decision informing the Petitioner that her FS benefits would decrease to \$16/month effective October 1, 2013.
6. On August 21, 2013, the agency issued a Notification of FS Overissuance to the Petitioner informing her that the agency would recoup an overissuance of benefits in the amount of \$184 for the month of September, 2013.

DISCUSSION

In determining the amount of FS to be issued each month, the county must budget all of the recipient's nonexempt income. 7 C.F.R. §273.9(b). From that income, certain deductions are allowed. The deductions include a standard deduction, which currently is \$149 per month. 7 C.F.R. §273.9(d)(1); FS Handbook (FSH) § 4.6.2. Another deduction is the earned income deduction, which equals 20% of the household's total earned income. 7 C.F.R. §273.9(d)(2); FSH, § 4.6.3. A third possible deduction is for medical expenses exceeding \$35 in a month for elderly or disabled persons. 7 C.F.R. §273.9(d)(3); FSH, § 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FSH, § 4.6.6. The final deduction is for shelter expenses; the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 C.F.R. §273.9(d)(5); FSH, § 4.6.7.

The issue in this case involves the medical expense deduction. The FSH provides the following guidance:

Allow previously acquired charges (not yet paid) and current payments when calculating a medical expense deduction. Previously acquired charges include charges incurred anytime before or during the certification period, as long as the individual has an agreement to pay the charges and is still obligated for the expense.

Past unpaid medical bills can be used to prospectively budget recurring medical expenses at application or recertification.

One time medical expenses (i.e. hospital bills) can be budgeted for one month or averaged over the remaining certification period.

Medical expense payments made during the certification period are allowable. Medical expenses paid prior to the certification period are not allowable.

FS Handbook § 4.6.4.1.

It is undisputed that the medical bills submitted by the Petitioner on July 30, 2013 were paid by the Petitioner during the certification period. The Petitioner testified credibly that she has always submitted her medical expenses at the end of the certification period and that she was instructed by her worker to do it this way.

The agency worker testified that if workers previous allowed and considered paid medical expenses submitted at the end of the certification period, it was done in error. He contends that previous errors are not a basis for continuing to apply the policy in error.

Petitioner is asking the Division of Hearings and Appeals to apply a type of equitable estoppel against the agency by asking it to estop the agency from applying the law regarding previously paid medical expenses to this case. Equitable estoppel generally cannot be imposed upon a government agency, *Milas v. Labor Association of Wisconsin, Inc.*, 214 Wis.2d 1, 571 N.W.2d 656 (1997); *Department of Revenue v. Moebius Printing Co.*, 89 Wis.2d 610, 279 N.W.2d 213 (1979). "[W]hen estoppel is asserted against the government, the party invoking it bears a heavy burden: the evidence must be so clear and distinct that the contrary result would amount to a fraud." *Kamps v. Department of Revenue*, 2003 WI App 106, ¶20, 264 Wis. 2d 794, 663 N.W.2d 306. The evidence in this case shows that the agency previously erred in allowing certain medical expenses in determining FS allotments for the Petitioner contrary to the law. An error in application of the law does not meet the burden.

The agency is required to recover benefits improperly paid to a client, regardless of whether it is agency error or client error. See 7 CFR §273.18. In this case, there was clearly an agency error when previous workers instructed the Petitioner to submit paid medical expenses at the end of the certification period. This resulted in the Petitioner continuing to submit bills in this manner which then resulted in an overissuance of benefits for the month of September, 2013. The Petitioner was entitled to \$16/month in FS benefits for September, 2013. She received \$200 in benefits. Therefore, the agency must recover \$184 from the Petitioner for September, 2013.

I note that the agency worker discussed with the Petitioner how to submit bills in the future in accordance with the policy so that her medical expenses can be considered in determining her benefits.

CONCLUSIONS OF LAW

The agency properly seeks to recover an overissuance of FS benefits in the amount of \$184 from the Petitioner for the month of September, 2013.

THEREFORE, it is

ORDERED

That the petition be, and hereby is, dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 28th day of October, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 28, 2013.

Washington County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability